BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Continue Implementation and Administration, and Consider Further Development, of California Renewables Portfolio Standard Program.	Rulemaking 15-02-020 (Filed February 26, 2015)

ORDER MODIFYING DECISION 17-06-026 AND DENYING REHEARING OF DECISION, AS MODIFIED

I. INTRODUCTION

On August 4, 2017 Pacificorp and Liberty Utilities LLC ("Liberty Calpeco") (collectively "Non-CBA Utilities") filed an application for rehearing challenging Decision (D.) 17-06-026. [1] In D.17-06-026 ("Decision"), the Commission implemented new compliance requirements for the renewables portfolio standard ("RPS") program, specifically in response to requirements in Senate Bill ("SB") 350 (De Leon, Stats. 2015, ch. 547). In relevant part, the Decision interprets SB 350 provisions to hold that only portfolio content category ("PCC") 1 Renewable Energy Credits ("RECs") can be counted as excess procurement credits which can be carried forward.[2] This

[1] All Commission decision citations refer to the official Commission pdf versions of the decisions, which can be found on the Commission's website. http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx

[2] The Commission has adopted the following procurement categories: "Category 1 for procurement described in § 399.16(b)(1); Category 2 for procurement described in § 399.16(b)(2); and Category 3 for procurement described in § 399.16(b)(3). Following the shorthand usage adopted by Energy Division staff and the parties, these categories may also be referred to as PCC 1, PCC 2, and PCC 3, respectively." (Decision, at p. 8, fn 11.)

All section references are to the Public Utilities Code unless otherwise stated.

provision forecloses utilities which are not included in the California Independent System Operator ("CAISO") balancing authority ("CBA") and can only meet their RPS obligations with PCC 3 RECs, from carrying over any excess procurement credit.

In their application for rehearing Non-CBA Utilities allege, "the Decision prevents the Non-CBA Utilities from accumulating excess procurement, in direct contravention of explicit statutory requirements." (Non-CBA Utilities App. Rehg., at p. 4.) Non-CBA Utilities provide suggested language to correct the alleged error. The Office of Ratepayer Advocates ("ORA") filed a response to Non-CBA Utilities' application for rehearing agreeing with their contentions. No party has opposed Non-CBA Utilities' allegations.

We have carefully considered the arguments presented by Non-CBA Utilities and are of the opinion that legal error has been demonstrated. Accordingly, we will modify the Decision to correct that error. Rehearing of D.17-06-026, as modified, is denied.

II. DISCUSSION

Non-CBA Utilities contend that the Decision's holding limiting excess procurement credits to PCC 1 RECs deprives them of any opportunity to carry over excess procurement credit. For that reason, they assert that the provision violates Public Utilities Code sections 399.13(a)(4)(B) and 399.17. Non-CBA Utilities also note that this holding conflicts with our previous holdings that the Commission must preserve the intent of the excess procurement provisions, and not unfairly disadvantage Pacificorp and Liberty Calpeco ratepayers.

In the Decision, we attempted to implement California's increasing preference for PCC 1 RECs, in SB 350 in particular. In SB 350, the Legislature specified that only PCC 1 RECs could be carried forward as excess procurement to be used in future compliance periods. (§ 399.13(a)(4)(B)(i), (ii).)

As the Non-CBA Utilities note however, section 399.17 recognizes the need for California to account for the Non-CBA Utilities' unique characteristics, and specifically allows them to meet their RPS requirements "notwithstanding any

procurement content limitation in Section 399.16…." (§ 399.17 (b).) In addition, section 399.13 (a)(4)(B) provides that rules permitting retail seller to accumulate excess procurement, "shall apply equally to all retail sellers."

In accord with these provisions, we carved out special exceptions for the Non-CBA Utilities to enable them to comply with the portfolio balance requirements and accumulate excess RECs, despite the fact that they may only procure PCC 3 RECs. In D.11-12-052, we found that Non-CBA Utilities may meet their RPS procurement obligations using entirely PCC 3 RECs. (D.11-12-052, at p. 63.) Subsequently, in D.12-06-038, we stated that "the rules for excess procurement should take into account any unique characteristics of SMJUs [small and multijurisdictional utilities including Non-CBA Utilities] within the RPS procurement framework." (D.12-06-038, at p. 70.) D.12-06-038 holds that "the Commission must preserve the intent of excess procurement provisions while not unfairly disadvantaging Pacificorp and CalPeco Ratepayers." (D.12-06-038, at p. 72.) In D.12-06-038, we created specific excess procurement rules for the Non-CBA Utilities that allowed their bundled PCC 3 RECs to be counted as excess and their unbundled PCC 3 RECs to be disallowed as excess procurement. (D.12-06-038, p. 73.)

In light of these statutory and Commission requirements, the Decision's failure to account for the procurement characteristics of the Non-CBA Utilities by limiting excess procurement credit carry overs to PCC 1 RECs, amounts to legal error. Accordingly, we will modify the language limiting carry overs to PCC 1 RECs to allow an exception for Non-CBA Utilities. We are in large part adopting the language suggested by Non-CBA Utilities, with minor modifications. The proposed language is essentially a return to previous excess procurement rules, but will only impact the Non-CBA Utilities, and not the other retail sellers.

III. CONCLUSION

We find that the Non-CBA Utilities have identified a legal error in the Decision. Therefore, we will modify the Decision correct this error and allow Non-CBA Utilities to be able to accumulate excess RECs. Rehearing of the Decision, as modified,

is denied. Any holdings in the Decision which are inconsistent with today's order are superseded.

Therefore, **IT IS ORDERED** that:

1. The following is inserted at the end of the first paragraph on page 26 of the Decision:

> Notwithstanding the changes to excess procurement rules set forth in SB 350, the Commission is required to continue recognizing the special characteristics of utilities that do not operate within a California Balancing Authority ("Non-CBA Utilities"). In applying the excess procurement rules to PacifiCorp and Liberty CalPeco, this Decision continues the framework set forth in D.12-06-038 that allows the Non-CBA Utilities to accumulate excess procurement despite their inability to procure PCC 1 RECs. The rules for Non-CBA Utilities accumulating excess procurement is set forth later in this Decision.

2. The following conclusions of law are added to the Decision:

> 39. In order to implement new requirements of SB 350 effectively, beginning with the 2021-2024 compliance period, a retail seller located outside of a California balancing authority should be able to count as excess procurement all RECs associated with long-term contracts, all RECs associated with short-term contracts, and all RECs associated with RPS eligible generation facilities owned by the retail seller, so long as those RECs were procured by the retail seller concurrently with the associated RPS-eligible generation, the retail seller has complied with the LT requirement, has met its PQR, and the RECs conform to all other requirements for excess procurement.
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> 40. In order to promote the transition to the use of the new LT requirement and new excess procurement rules, a retail seller located outside of a California balancing authority who elects early compliance with Section 399.13(b) should be able to count as excess procurement in the 2017-2020 compliance period all RECs associated with long-term contracts, all RECs associated with short-term contracts, and all RECs associated with RPS eligible generation facilities

owned by the retail seller, so long as those RECs were procured by the retail seller concurrently with the associated RPS-eligible generation, the retail seller has complied with the LT requirement, has met its PQR, and the RECs conform to all other requirements for excess procurement.

41. In order to conform RPS compliance to the requirements of SB 350, beginning with the 2021-2024 compliance period, a retail seller located outside of a California balancing authority should not be required to subtract the number of RECs procured separately from the RPS-eligible generation originally associated with the RECs and counted for RPS compliance in the current compliance period from the retail seller's procurement for purposes of calculating excess procurement, if the retail seller has met its PQR for the current compliance period and thus may count RECs toward excess procurement in that compliance period.

42. In order to conform RPS compliance to the requirements of SB 350, beginning with the 2017-2020 compliance period, a retail seller located outside of a California balancing authority that elects early compliance with Section 399.13(b) should not be required to subtract the number of RECs procured separately from the RPS-eligible generation originally associated with the RECs and counted for RPS compliance in the current compliance period from the retail seller's procurement for purposes of calculating excess procurement, if the retail seller has met its PQR for the current compliance period and thus may count RECs toward excess procurement in that compliance period.

3. The following ordering paragraphs are added to the Decision:

30. Beginning with the 2021-2024 compliance period, or the 2017-2020 compliance period if a retail seller chooses early compliance with Pub. Util. Code § 399.13(b), a retail seller located outside of a California balancing authority may count as excess procurement all renewable energy credits (RECs) associated with long-term contracts, all RECs associated with short-term contracts, and all RECs associated with RPS-

eligible generation facilities owned by the retail seller, so long as those RECs were procured by the retail seller concurrently with the associated RPS-eligible generation, the retail seller has complied with the requirements of Section 399.13(b) for the current compliance period, has met it its procurement quantity requirement for the current compliance period, and the RECs conform to all other requirements for excess procurement.

31. Beginning with the 2021-2024 compliance period, or the 2017-2020 compliance period if a retail seller chooses early compliance with Pub. Util. Code § 399.13(b), a retail seller located outside of a California balancing authority may not count any renewable energy credits procured separately from the RPS-eligible generation as excess procurement to be applied in a later compliance period.

32. Beginning with the 2021-2024 compliance period, or the 2017-2020 compliance period if a retail seller chooses early compliance with Pub. Util. Code § 399.13(b), a retail seller located outside of a California balancing authority will not be required to subtract the quantity of renewable energy credits (RECs) procured separately from the RPS-eligible generation counted for compliance in the current compliance period from the retail seller's procurement for purposes of calculating excess procurement, so long as the retail seller has met its procurement quantity requirement for the current compliance period and thus may count RECs as excess procurement in that compliance period.

4. Rehearing of D.17-06-026, as modified herein, is denied.

This order is effective today.

Dated November 30, 2017, at San Francisco, California.

MICHAEL PICKER
President
CARLA J. PETERMAN
LIANE M. RANDOLPH
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
Commissioners